DOMICILE—CHANGE—INTENT.—Where complainant's domicile of origin was Newport, R. I., where she and her ancestors had lived for more than two generations, where she owned a house and had always claimed her residence, and where she and her husband paid personal taxes and her husband was buried and his will probated, the fact that she also acquired residences in New Hampshire and Massachusetts in each of which she lived portions of the year, remainder of the time in Newport, even though six months of the time in Massachusetts: *Held,* not sufficient to establish a change of domicile to Massachusetts. *Dunn* v. *Trefry,* (C. C. A., 1st Circ., 1919) 260 Fed. 147.

It is universally agreed that a change of domicile requires both the act or fact of transfer of bodily presence from the old place of abode to the new, and the concurring intention to abandon the old domicile and gain the new one. For strong cases where the intent alone was insufficient, see *Casey's Case,* 1 Ashmead 126; *Penfield* v. *Chesapeake R. R. Co.,* 29 Fed. Rep. 494. For strong cases where long and continuous actual residence failed to accomplish a change of domicile, see *Collier* v. *Rivaz,* 2 Curt. Eccl. 855; *Dupuy* v. *Wurtz,* 53 N. Y. 556. In the principal case, on the facts above stated, plus other facts showing contingent intent to reside in Massachusetts, Anderson, J., in the lower court, found that complainant was domiciled in Boston, because he thought for all legal purposes this remote contingency was unimportant. The reviewing court, finding facilities for residence in Rhode Island, found the contingency obscured the clear intent necessary to change domicile, and declined to find the requisite intent to change domicile. Of these two different conceptions of the facts necessary to base an inference of intent, that of the Circuit Court of Appeals seems most clearly in harmony with the classic idea of intent—intent to abandon the old domicile with concurrent intent to gain a new domicile, because as long as there is doubt in one's mind as to giving up old domicile completely, the old legal idea of intent is not fulfilled. See further, *Gilman* v. *Gilman,* 83 Am. Dec. 502; JACOBS, LAW OF DOMICILE, Sec. 125, 126; 23 HARV. L. REV. 211; 9 HARV. L. REV. 544.

FALSE STATEMENTS—RESULTING NERVOUS SHOCK—LIABILITY FOR.—In an action on the case for damages for illness resulting from a nervous shock induced by false words and threats on the part of the defendant. *Held,* that the defendant was liable. *Janvier* v. *Sweeney,* [1919] 2 K. B. 316.

Awarding damages for bodily harm resulting from a nervous shock brought about by spoken words is comparatively novel and but few cases have been decided on the point. The decision in the principal case was based almost entirely on *Wilkinson* v. *Downton* [1897] 2 Q. B. 57, where the defendant, as a practical joke, informed the plaintiff that the latter's husband had met with a serious accident. Severe illness resulted from the shock and the plaintiff was permitted to recover. Wright, J., in deciding the case, made the statement, "it must be admitted that the present case is without precedent." Several intervening cases, notably *Dulieu* v. *White and Son's,* [1901] 2 K. B. 669, approved *Wilkinson* v. *Downton, supra,* but none of these

involved injury as the result of spoken words, being cases where the mental shock was caused by negligent acts. *Allsop* v. *Allsop,* 5 H. and N. 534, involved injury resulting from spoken words and did not allow a recovery. This was considered, both in the principal case and its predecessor, but was distinguished on the ground that it was an action for slander and the words were not spoken in the presence of the plaintiff. The cause of action in both *Janvier* v. *Sweeney, supra,* and *Wilkinson* v. *Downton, supra,* seems fairly obvious. The defendant has wilfully done an act reasonably calculated to cause physical harm to the plaintiff, and physical harm has in fact resulted. In neither case was there justification alleged for the act. The difficulty in both of these cases, however, is not whether such an injury is actionable when it results from words alone, but whether there can be any recovery for physical injury which is the result of fright and not of physical impact. The same question is involved where the injury is caused by negligence through the intermediary of fright. The opposition to permitting recoveries in such cases arose largely from the fact that courts failed to distinguish between fright as a consequence and fright as a link in a chain of causation. Fright, unaccompanied by physical injury, has never been recognized as a basis for recovery, and influenced principally by this fact the English Privy Council, in the *Victorian Railways Commissioners* v. *Coultas,* 13 App. Cases 222, established the doctrine that no recovery should be allowed where physical injury has resulted from nervous shock on the following grounds: 1st, that the damage was too remote, since it was the result of the fright, not of the negligent act; 2d, that a contrary decision would be against public policy, since it would afford a wide range of opportunity for imaginary claims. The doctrine has been followed in Mass., N. Y., Ill., and several other states. See *Spade* v. *Lynn and Boston R. Co.,* 168 Mass. 285; *Mitchell* v. *Rochester R. Co.,* 151 N. Y. 107; *Brown* v. *Craven,* 175 Ill. 401. The ground upon which greatest stress has been laid in these cases is that of public policy. The ground of remoteness of cause has also been recognized and maintained, however, the view of the courts apparently having been that fright accompanied by physical injury, however severe, is only aggravated fright and cannot be recognized as a basis for recovery. *Victorian Railways Commissioners* v. *Coultas, supra,* the basis for these minority holdings, has been disapproved in *Bell* v. *Great Northern Railway Co. of Ireland,* 26 L. R. Ir. 428; *Wilkinson* v. *Downton, supra; Dulieu* v. *White and Sons, supra;* and is said to be no longer good law in *Coyle* v. *Watson, Ld.,* [1915] A. C. 1. The modern and more logical rule as stated in *Purcell* v. *St. Paul City Ry. Co.,* 48 Minn. 134, and *Dulieu* v. *White and Sons, supra,* is that where physical injury results from negligence the fact that a mental condition or operation intervenes between the negligence and the injury does not break the required sequence of causes. These courts were not misled by the fact that a state of mind is in itself not a tangible cause of action. The physical injury, and not the fright itself, is the basis of the action. *Dulieu* v. *White and Sons, supra,* also disapproved the most cherished ground of the minority doctrine, public policy, recognizing that such a doctrine would result in the denial of redress in many meritorious cases. Since the injury itself is easily determinable,

and also its exact connection with the wrongful or negligent act, it is difficult to see why the much-feared opportunity for imaginary claims should arise. The policy of the law most certainly should not be directed toward discouraging just litigation. The October number of the LAW Q. REV. (1919) p. 287 declares that the principal case has finally established the majority doctrine. See also 41 AM. LAW REG. (N. S.) 141 and 15 HARV. L. REV. 304. An interesting speculation is raised by considering the results had the statements made by the defendants, both in the principal case and in *Wilkinson* v. *Downton, supra,* been true. The action in both is confessedly based upon the injury and not upon the falsity of the statement. If such a doctrine is carried to its logical extremity, it is difficult to see how the same decisions could have been avoided had the statements been true. Such a result is manifestly *reductio ad absurdum.* It is submitted that the court should in some way base its decision at least in part upon the falsity.

HUSBAND AND WIFE—WIFE'S CONTRACT TO CONVEY WITHOUT WRITTEN ASSENT OF HUSBAND.—A wife, without the written consent of her husband required by statute, deeded land to a grantee, who immediately executed notes for the purchase money secured by a mortgage back on the land. After the death of her husband the wife advertised the land for sale under the mortgage but when the grantee tendered the full amount due she called off the sale and sued in ejectment for the land. *Held,* (two Justices dissenting) the grantee was entitled to a decree for specific performance, the wife's deed having been good as a contract to convey. *Sills* v. *Bethea,* (N. C., 1919) 100 S. E. 593.

That this deed by the wife was in no sense a conveyance of title, as it was void and as the grantee immediately gave back a mortgage on the land, can be readily seen. *Bunting* v. *Jones,* 78 N. C. 242; *Council* v. *Pridgen,* 153 N. C. 443, 69 S. E. 404. But holding the instrument to be a contract to convey, capable of specific performance, seems doubtful upon principle. The decisions of North Carolina seem to hold conclusively that any instrument executed by a married woman purporting to transfer title to her real estate, unless her husband joins or his written consent is obtained, is absolutely void. *Ball* v. *Pacquin,* 140 N. C. 83, 52 S. E. 410, 3 L. R. A. (N. S.) 307; *Bank* v. *Benbow,* (N. C.) 64 S. E. 491; *Council* v. *Pridgen, supra.* However the same court has held that the contract of a married woman, which does not purport to transfer any title to her land, is valid and an action for damages for breach thereof may be sustained against her, although such contract is not capable of specific performance, as her husband's written consent could not be compelled. *Warren* v. *Dail,* 170 N. C. 406; 14 MICH. L. REV. 423. If her instrument purporting to convey title is an absolute nullity it is hard to see how it can be ratified. Being void in its inception it is incapable of ratification. Likewise the case seems equally unjustifiable when considered in the light of the doctrine of equitable estoppel, since the defendant has not been led to act to his detriment by the fraudulent representations of the plaintiff. See *Miller-Jones Furniture Co.* v. *Fort Smith Ice and Coal Co.,* 66 Ark. 287, 50 S. W. 508; *Ricketts* v. *Scothorn,* 57 Nebr. 51, 77 N. W. 365,